



NEW YORK:  
45 Broadway  
32nd Floor  
New York, NY 10006  
T 212.221.6900  
F 212.221.6989  
Green. A@WSSL.com

May 16, 2022,

**VIA CM/ECF**

Hon. Jeremiah J. McCarthy  
United States Magistrate Judge  
Western District of New York  
Robert H. Jackson United States Courthouse  
2 Niagara Square  
Buffalo, New York 14202

Re: Moog, Inc. v. Skyryse, Inc. et al., W.D.N.Y. Case No. 22-cv-187

Dear Judge McCarthy:

Winget, Spadafora & Schwartzberg, LLP represents defendants Robert Alin Pilkington (“Pilkington”) and Misook Kim (“Kim”) in the above-referenced matter. We write this letter pursuant to the Court’s instruction that Pilkington and Kim state whether they will continue to pursue their Fed. R. Civ. P. 12(b)(6) motion in light of the fact that defendant Skyryse, Inc. (“Skyryse”) withdrew its motion to dismiss. *See* Dkt No. 101.

By way of brief background, Pilkington and Kim joined with Skyryse’s arguments to dismiss Plaintiff’s sixth (civil conspiracy); ninth (tortious interference with prospective economic advantage); and tenth (unjust enrichment) causes of action. Generally, the arguments presented in support of dismissal are: (a) the Complaint improperly relies on joint pleading/there is no standalone cause of action for civil conspiracy; (b) the Complaint fails to adequately plead all necessary elements for a tortious interference with prospective economic advantage cause of action; and (c) the existence of an express contract precludes any unjust enrichment claim.

As these arguments are directed to the sufficiency of the Complaint, they should not be affected by Skyryse, Inc.’s withdrawal of its motion to dismiss nor the other developments in this action. Pilkington and Kim, therefore, maintain their Fed. R. Civ. P. 12(b)(6) motion to dismiss the sixth, ninth, and tenth causes of action.

Nonetheless, Skyryse’s withdrawal of its motion presents unusual circumstances as the papers containing the arguments Pilkington and Kim adopted are no longer before the Court. With the Court’s permission, Pilkington and Kim propose to redress this issue by submitting a supplemental brief pursuant to the following schedule: (1) Pilkington and Kim will submit a brief of no longer than ten pages (not including table of contents and table of authorities) by May 30, 2022; (2) Plaintiff may submit an opposition of the same length by no later than June 13, 2022; (3) there shall be no reply.

[www.WSSL.com](http://www.WSSL.com)

NEW JERSEY:  
2500 Plaza 5  
Harsborside Financial Center  
Jersey City, NJ 07311  
T 201.633.3630

CONNECTICUT:  
177 Broad Street  
10th Floor  
Stamford, CT 06901  
T 203.328.1200

FLORIDA:  
14 NE 1<sup>st</sup> Avenue  
Suite 600  
Miami, FL 33132  
T 305.830.0600

CALIFORNIA:  
1900 Ave of the Stars  
Suite 450  
Los Angeles, CA 90069  
T 310.836.4800

TEXAS:  
Two Riverway  
Suite 725  
Houston, TX 77056  
T 713.343.9200

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Prior to making this request, counsel for Pilkington and Kim reached out to Plaintiff's counsel to obtain their consent. Plaintiff consented to Pilkington and Kim's request, including the proposed schedule set forth above.

We thank the Court for its consideration of our request. Should the Court have any further questions, please do not hesitate to contact us.

Respectfully submitted,

/s/ Anthony D. Green  
Anthony D. Green, Esq.

cc: Rena Andoh, Esq.  
RAndoh@sheppardmullin.com  
30 Rockefeller Plaza  
New York, NY 10112-0015  
*Counsel for Plaintiff*

Doug Lumish, Esq.  
Doug.Lumish@lw.com  
140 Scott Drive  
Menlo Park, CA 94025  
*Counsel for Skyryse, Inc.*